

FILED
2023 APR 17 PM 4:28
CLARK COUNTY COURT
CLARK COUNTY, OHIO

**IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO
CIVIL DIVISION**

**James Auckerman
1116 Wendall Ave.
New Carlisle, OH 45344**

: Case No.: **23 CV 246**

: Judge:

Plaintiff,

:

vs.

:

**WALMART, INC.
C/O CT CORPORATION SYSTEM
4400 Easton Commons Way, Suite 125
Columbus, OH 43219**

: **COMPLAINT FOR PERSONAL
INJURIES WITH JURY DEMAND**
: **ENDORSED HEREIN**

And

:

**Toys For All, LLC.
c/o Sebastian Martinez Registered Agent
10235 Ramblewood Dr.
Coral Springs, FL 33071**

:

Defendants.

INTRODUCTION

Plaintiff, James Aukerman makes the within allegations based upon personal knowledge and upon information and belief. Plaintiff brings this action seeking redress for damages resulting from Defendants, Walmart, Inc., and Toys For All, LLCs' defective manufacturing, supplying, distributing, and selling of a product under O.R.C. § 2307.74; O.R.C. § 2307.75; and O.R.C. § 2307.06. Plaintiff alleges, among other things: manufacturing defect, design defect, and warning defect in violation of O.R.C. § 2307.74; O.R.C. § 2307.75; and O.R.C. § 2307.06, and as a supplier. Plaintiff seeks among other remedies, compensatory damages, punitive damages, and attorney fees and costs of this action pursuant to O.R.C. § 2309.01 and O.R.C. § 2307.80.

BACKGROUND

1. At all relevant times, Defendant, Walmart, Inc. (hereafter "Defendant Walmart"), and Defendant, Toys For All, LLC. (hereafter "Defendant Toys"), are companies licensed to do business within the State of Ohio.
2. Defendants are distributors, retailers, wholesalers, and/or agents or brokers in the sale of Mikksire Highway Commuters Aluminum Full Suspension Road Bike, 21 Speed, to Plaintiff in 2021.
3. Defendants were negligent in the supplying, manufacturing, and selling of a Mikksire Highway Commuters Aluminum Full Suspension Road Bike, 21 Speed.
4. In 2021, Plaintiff purchased a Mikksire Highway Commuters Aluminum Full Suspension Road Bike, 21 Speed, Disc Brakes, 700c, delivered to his Ohio home in or about March 2021, and venue is proper in Clark County.
5. On or about May 20, 2021, Plaintiff, James Aukerman (hereafter "Plaintiff"), was injured while riding his Mikksire Highway Commuters Aluminum Full Suspension Road Bike when the left pedal came off, and was thrown over the handlebars, throwing him to the ground, causing substantial injury.
6. Defendants are distributors, retailers, wholesalers, and/or agents or brokers in the sale of Mikksire Highway Commuters Aluminum Full Suspension Road Bike, 21 Speed, which was manufactured outside jurisdiction, in China, by a separate company that is not subject to Ohio Court's personal jurisdiction, and not subject to judicial process in Ohio.

FIRST CLAIM OF RELIEF

7. The subject Mikksire Highway Commuters Aluminum Full Suspension Road Bike was defective and unreasonably dangerous when placed into the stream of commerce by Defendant by reason of the following product defects:
 - a. **Manufacturing Defect**
The subject Mikksire Highway Commuters Aluminum Full Suspension Road Bike was defective in manufacture and construction as defined in O.R.C. § 2307.74 in particular the left pedal, while properly installed, failed to serve its purpose, and became detached;
 - b. **Design Defect**

The subject Mikksire Highway Commuters Aluminum Full Suspension Road Bike was defective in design or formulation as defined in O.R.C. § 2307.75 in that in particular the pedal assembly internally was defective, allowed the pedal to become unscrewed and fall off the bike;

c. Consumer Expectation Standard

The product was defective because it did not conform to the representations made by Defendant as defined in O.R.C. § 2307.77 in particular, pedal on a new bike is not expected to become detached with normal use;

d. Risk Benefit Standard

The foreseeable risks associated with the design of the Mikksire Highway Commuters Aluminum Full Suspension Road Bike as defined in O.R.C. § 2307.75 exceeded the benefits associated with that design or formulation; and

e. Warning Defect

The subject Mikksire Highway Commuters Aluminum Full Suspension Road Bike was defective due to inadequate warning or instruction, as they are defined in O.R.C. § 2307.06, in that Defendants failed to provide adequate warning or instruction that a manufacturer or seller exercising reasonable care would have provided concerning the risk of injury and likely seriousness of harm for use of the product, in particular, the failure of the pedal for it's intended use.

8. As a proximate result of the defective nature of the subject Mikksire Highway Commuters Aluminum Full Suspension Road Bike, manufactured, marketed, sold, and otherwise introduced into the stream of commerce by Defendants, Plaintiff suffered serious and permanent injuries and damages as follows:
 - a. Bodily injuries including but not limited to a broken rib, punctured lung, bruising on the left side;
 - b. Great pain and suffering, both physical and emotional, and loss of ability to perform usual functions and the injuries will cause further pain and suffering in the future;
 - c. Reasonable and necessary medical expenses in excess of \$77,052.11, as well as future medical treatment and expenses;
 - d. Miscellaneous out of pocket expenses in an amount yet to be determined.
9. The conduct of Defendants in supplying and inspecting the subject Mikksire Highway Commuters Aluminum Full Suspension Road Bike used by Plaintiff on May 20, 2021, constitutes misconduct by the supplier that manifested a flagrant disregard for the safety of the persons who might be harmed by the product in question, such that an award of punitive damages against Defendant pursuant to O.R.C. § 2307.80 is proper in this case.

WHEREFORE, Plaintiff, James Aukerman, pursuant to O.R.C. § 2309.01 and 2307.80, demands judgment against Defendants, Walmart, Inc. and Toys For All, LLC. for compensatory and punitive damages in an amount in excess of \$25,000.00, plus attorney fees and the costs of this action.

Respectfully submitted,

DYER, GAROFALO, MANN & SCHULTZ



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JURY DEMAND

Now comes Plaintiff, by and through counsel, and hereby demands a trial by jury on all issues of this matter.

Respectfully submitted,

DYER, GAROFALO, MANN & SCHULTZ



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